

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

4D Factory, Inc.,

Debtor.

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Chapter 11

Case No. 23-11618 (MEW)

STIPULATION AND ORDER BY AND BETWEEN THE DEBTORS AND
MEP CAPITAL HOLDINGS III, L.P. AUTHORIZING ISSUANCE OF
SUBPOENA(S) AND DIRECTING EXAMINATION AND PRODUCTION
OF DOCUMENTS

Whereas, the Debtors, 4D Factory, Inc. and The 4D Factory, LLC (collectively, the “Debtors”) have been cooperating and consulting with MEP Capital Holdings III, L.P. (“MEP”) regarding the Debtors’ attempts to formulate a consensual Plan in this case; and

Whereas, MEP seeks discovery of documents and information concerning the Debtors’ financial information pursuant to Rules 2004 and 9016 of the Federal Rules of Bankruptcy Procedure, seeking authorization for MEP to issue subpoenas to the Debtors without prejudice to the right of Debtors to object, (a) directing the production for inspection and copying records of documents in response to the request attached hereto as Schedule I (the “Document Request”); and (b) directing the appearance and submission to an oral examination to be taken under oath to testify as to the topics attached hereto as Schedule II (“Examination Topics”), and has requested that the Debtor consent to such discovery without unnecessary motion practice; and

Whereas, the Parties have reached an agreement in good faith to the discovery proposed and requested by MEP with a reservation of rights for the Debtors to protect or prevent disclosure

based on, among other things, potentially confidential, sensitive, proprietary and/or privileged information; and

NOW THEREFORE, IT IS HEREBY STIPULATED AND ORDERED THAT:

1. MEP may issue a subpoena via email to Debtors' counsel directing Debtors to produce documents in response to the Document Request without prejudice to the right of Debtors to object on any grounds to production of documents other than service. Debtors may also request that MEP enter into written confidentiality agreement(s) regarding documents or information that the Debtors consider confidential, sensitive or proprietary. Debtors waive no objections to production of documents, information or testimony requested by consenting to this Stipulation and Order, including but not limited to objections on the basis of privilege. MEP and the Debtors agree to work in good faith to resolve any disputes over production or disclosure of information but reserve the right to submit any unresolved dispute to the Bankruptcy Court for a determination.

2. MEP may issue a subpoena via email to Debtors' counsel directing Debtors to appear for an examination under oath to testify as to the Examination Topics without prejudice to the right of Debtors to object on any grounds (with the same reservation of rights in paragraph 1 hereof) other than service.

3. To the extent necessary, MEP's rights are reserved to request additional examinations or documents under Bankruptcy Rule 2004 based on any information that may be revealed as a result of the discovery obtained pursuant to this Stipulation and Order.

4. This Stipulation and Order does not grant rights to any party other than MEP to issue subpoenas or conduct the examination of Debtors.

5. The Parties hereto agree to a schedule that calls for production of documents on or before December 28, 2023, but MEP agrees that if the Debtors have made a good faith effort to provide

documents and have provided documents by December 28, 2023, that this deadline can be extended by mutual agreement between the Parties.

6. This Court retains jurisdiction to resolve all matters arising under or related to this Stipulation and Order, and to interpret, implement, and enforce the provisions of this Stipulation and Order.

Dated: December 8, 2023
Roslyn, New York

SPENCE LAW OFFICE, P.C.
Attorneys for the Debtors

By: /s/ Robert J. Spence
Robert J. Spence, Esq. (RS3506)
55 Lumber Road, Ste 5
Roslyn, New York 11576
(516) 336-2060

Dated: December 8, 2023
Reston, Virginia

REITLER KAILAS & ROSENBLATT LLP
Attorneys for MEP

By: /s/ Lauren Friend McKelvey
Lauren Friend McKelvey
(admitted *pro hac vice*)
11921 Freedom Drive, Suite 550
Reston, Virginia 20190
(212) 209-3037

SO ORDERED:

Dated: New York, New York
_____, 2023

THE HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE

Schedule I
DOCUMENT REQUEST

Document Request No. 1: With respect to any bank account in the name of Debtor The 4D Factory, LLC, all bank account statements and records of transactions, including wire confirmations and copies of cancelled checks from December 1, 2022 to present.

Document Request No. 2: Debtor The 4D Factory, LLC's federal and state tax returns for the years 2021 through the present.

Document Request No. 3: Debtor The 4D Factory, LLC's financial statements, including balance sheet, cash flow statement, and profit and loss statement, for the years 2021 through the present.

Document Request No. 4: All Documents and Communications relied on by the Debtor The 4D Factory, LLC when determining the value stated on its Schedules of its non-publicly traded stock and interests in Neon Media, Neon Machine, and Centili.

Document Request No. 5: All Documents and Communications concerning the value of the Debtor The 4D Factory, LLC's non-publicly traded stock and interests in Neon Media, Neon Machine, and Centili, including any internal valuations, any valuations provided by the Debtor The 4D Factory, LLC to any person (including actual and potential investors, purchasers, or lenders), and any valuations provided by any person to the Debtor The 4D Factory, LLC (including in connection with any disputes concerning such stock and interests).

Document Request No. 6: With respect to any bank accounts in the name of Neon Machine, all bank account statements and records of transactions, including wire confirmations and copies of cancelled checks from December 1, 2022 to present.

Document Request No. 7: Neon Machine's federal and state tax returns for the years

2021 through the present.

Document Request No. 8: Neon Machine's financial statements, including balance sheet, cash flow, and profit and loss, for as long as the Debtor The 4D Factory, LLC has owed stock in Neon Machine through the present.

Document Request No. 9: Neon Machine's accounts payable summary aging report on a monthly basis from December 1, 2022 through the present.

Document Request No. 10: Neon Machine's accounts receivable summary aging report on a monthly basis from December 1, 2022 through the present.

Document Request No. 11: All agreements between and among Neon Machine and any person (including customers and vendors, but excluding employees) in excess of \$10,000 in total contract value, which are reflected on Neon Machine's accounts payables or accounts receivable, or related to the provision of any goods or services from and after December 1, 2022.

Document Request No. 12: Neon Machine's employee census and payroll data from December 1, 2022 through the present.

Document Request No. 13: Neon Machine's organizational charts from December 1, 2022 through the present.

Document Request No. 14: All game development budgets and/or progress reports for Neon Machine.

Document Request No. 15: Documents reflecting or constituting fundraising or investment materials shared with Neon Machine's board of directors, investors, lenders, or potential investors or lenders.

Document Request No. 16: Documents reflecting or constituting presentations or agendas shared with Neon Machine's board of directors or investors.

Document Request No. 17: All board meeting minutes of Neon Machine, including of any board committee.

Document Request No. 18: All company or corporate resolutions of Neon Machine.

Document Request No. 19: All Documents and Communications, including, but not limited to, demand letters, claim letters, notices, or pleadings, concerning a dispute, claim, or litigation asserted against Neon Machine by any person or by Neon Machine as against any person, which is not fully resolved as of December 1, 2023.

Document Request No. 20: All Documents and Communications, including, but not limited to, demand letters, claim letters, notices, or pleadings, concerning the dispute asserted by Colin Foran, Naomi Lackaff, Mark Long, Aaron Nonis, Don Norbury, and/or Mark Yeend against Cort Javarone, Scott Honour, Steve Horowitz, and/or Neon Machine.

Document Request No. 21: With respect to any bank accounts in the name of Centili, all bank account statements and records of transactions, including wire confirmations and copies of cancelled checks from December 1, 2022 to present.

Document Request No. 22: Centili's federal and state tax returns, if any, for the years 2021 through the present.

Document Request No. 23: Centili's financial statements, including balance sheet, cash flow, and profit and loss, for as long as the Debtor The 4D Factory, LLC has owed stock or interests in Centili through the present.

Document Request No. 24: Centili's accounts payable summary aging report on a monthly basis from December 1, 2022 through the present.

Document Request No. 25: Centili's accounts receivable summary aging report on a monthly basis from December 1, 2022 through the present.

Document Request No. 26: All agreements between and among Centili and any person (including customers and vendors, but excluding employees) in excess of \$10,000 in total contract value, which are reflected on Centili's accounts payables or accounts receivable, or related to the provision of any goods or services from and after December 1, 2022.

Document Request No. 27: Centili's employee census and payroll data from December 1, 2022 through the present.

Document Request No. 28: Centili's organizational charts from December 1, 2022 through the present.

Document Request No. 29: All Documents and Communications, including, but not limited to, demand letters, claim letters, notices, or pleadings, concerning a dispute, claim, or litigation asserted against Centili by any person or by Centili as against any person, which is not fully resolved as of December 1, 2023.

Document Request No. 30: With respect to any bank accounts in the name of Neon Media, all bank account statements and records of transactions, including wire confirmations and copies of cancelled checks from December 1, 2022 to present.

Document Request No. 31: Neon Media's federal and state tax returns for the years 2021 through the present.

Document Request No. 32: Neon Media's financial statements, including balance sheet, cash flow, and profit and loss, for as long as the Debtor The 4D Factory, LLC has owed interests in Neon Media through the present.

Document Request No. 33: Neon Media's accounts payable summary aging report on a monthly basis from December 1, 2022 through the present.

Document Request No. 34: Neon Media's accounts receivable summary aging report on

a monthly basis from December 1, 2022 through the present.

Document Request No. 35: All agreements between and among Neon Media and any person (including customers and vendors, but excluding employees) in excess of \$10,000 in total contract value, which are reflected on Neon Media's accounts payables or accounts receivable, or related to the provision of any goods or services from and after December 1, 2022.

Document Request No. 36: All game development budgets and/or progress reports for Neon Media.

Document Request No. 37: All Documents and Communications, including, but not limited to, demand letters, claim letters, notices, or pleadings, concerning a dispute, claim, or litigation asserted against Neon Media by any person or by Neon Media as against any person, which is not fully resolved as of December 1, 2023.

Schedule II

EXAMINATION TOPICS

1. The Documents and Communications requested in the Document Request, whether or not produced by Debtors.
2. MEP's claims in the Debtors' bankruptcy cases and any disputes of Debtors with respect to MEP's claims.
3. The valuation of the Debtors' assets, including the financial condition of Neon Media, Neon Machine, and Centili and any disputes that may impact the valuation of the Debtor's assets.
4. The Debtors' efforts to sell or otherwise monetize their assets in order to make payments to the Debtors' creditors in their bankruptcy cases.